IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL REVN. APPLICATION NO.156 OF 1997

Asif Ajeej Shaikh .. ..Petitioner

Versus

Mrs.Zeenath Asif Shaikh & Anr. .. ..Respondents

Mr.V.G.Peshave for petitioner

Mr.S.S.Pednekar, APP for State

CORAM : S.C.DHARMADHIKARI, J.

DATE : 29TH NOVEMBER, 2006

P.C.:

1. This application is directed against the order passed by the learned Judge, Family Court No.1, Pune granting maintenance to the wife under Section 125 of Criminal Procedure Code. The maintenance is awarded at Rs.250/= per month from 7th September, 1996.

2. The only submission of Shri Peshave appearing for the petitioner-husband is that the application for maintenance under Section 125 of Criminal Procedure Code was not maintainable once the Muslim Women (Protection of Rights on Divorce) Act, 1986 came into force. The submission of Shri Peshave is that under this Act she is entitled to the amount of Iddat and Mehar, the family court had no jurisdiction to entertain the application. The court exercising powers under Section 3 and 4 of the 1986 Act alone has jurisdiction. It is contended that after filing of the application the wife was given Talak. This fact was brought to the notice of the family court. Her application was therefore not maintainable. In such circumstances, the family court has assumed the jurisdiction erroneously and its order deserves to be set aside on that ground alone.

3. In support of his submission Shri Peshave placed strong reliance upon a Full Bench Decision of this Court reported in **2000(3) Mh.L.J.-page 555- Karim Abdul Rehman Shaikh vs. Shehnaz Karim Shaikh & Ors.** He has also invited my attention to another decision reported in **2002(2) Mh.L.J. page 115 - Naseemunisa Begum d/o Shaikh Yasin and Anr. vs. Shaikh Abdul Rehman s/o Shaikh**

Gafoor.

4. On the other hand Shri Rathod, appearing for the original applicant-wife, submits that even if the conclusion of the court below that the application was maintainable is based upon the Division Bench decision reported in **1994 Mh.L.J. 1376 - Alla Baksh Karim Shaikh vs. Noorjanha Alla Baksh Shaikh** and that judgement is overruled by a Full Bench decision that would not of be any consequence in the peculiar facts and circumstances of this case. He submits that firstly the Talak was not proved and secondly assuming the Talak was so proved the jurisdiction of the family court is not ousted. The family court decided the matter on the basis of the Division Bench decision of this Court reported in 1994 Mh.L.J. 1376. The Full Bench itself has clarified that all matters which are concluded in the light of the law laid down by the Division Bench decision would not be reopened and no orders granting maintenance following the said judgment ought to be set aside merely because the Division Bench decision has been overruled. He has invited my attention to the decisions cited by Shri Peshave to clarify the above position.

5. With the assistance of the learned counsel appearing for both sides I have perused the order under challenge and the decisions relied upon. The Full Bench decision of this Court has clarified the position and it observes in para 64 as under :

> "64. We are mindful of the fact that the decision of the Division Bench of this Court in Allabuksh's case (supra) was rendered on 22.6.1994. It was followed by the learned Single Judge of this Court in Shaikh Babbu vs. Sayeda Masarat Begum, 1999 (3) Mh.L.J. 465. These decisions are holding the field till date. Obviously therefore the fate of a number of matters has been decided on the basis of the said judgment. Bearing the above fact in mind, after having answered the questions, we issue the following directions in the light of the observations made by us in the present judgment.
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> (a) All pending applications under section 125 of the Code filed by divorced Muslim women pending after commencement of the Muslim Women Act will be treated as applications under the Muslim Women Act

and will be disposed of as per the provisions of the said Act.

(b) All applications under section 125 of the Code filed by divorced Muslim women which are pending in the Family Court will be transferred to the concerned Magistrate’s Court for disposal according to the provisions of the Muslim Women Act. Interim orders passed therein will be continued till the Magistrate disposes them of.

(c) All applications under section 125 of the Code filed by divorced Muslim women, which have been decided finally pursuant to the decision of the Division Bench of this Court in Allabuksh’s case (supra) will not be reopened due to the present judgment."

Therefore, all applications under Section 125 of the Code filed by divorced Muslim women which have been decided finally pursuant to the decision of the Division Bench will not be reopened after the Full Bench decision. Thus, the Full Bench decision in its application has been restricted to matters pending on the date of pronouncement

of the Full Bench decision and thereafter. The only submission of Shri Peshave therefore would have to be rejected. It is not permissible to go into the other aspects once it is clear that the family court had the necessary jurisdiction, power and authority to decide the application and pass appropriate orders. This aspect has been also clarified by the subsequent Division Bench decision and para 16 thereof makes the position clear.

6. Since this was the only submission made and which is found to be without any substance there is no alternative but to reject the application. The same is accordingly rejected. Rule is discharged.

(S.C.Dharmadhikari, J.)